

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____	X	
In re PAYMENT CARD INTERCHANGE	:	No. 05-md-1720 (MKB)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	JOINT STATUS CONFERENCE STATEMENT
_____	:	
	:	CONFERENCE DATE: FEBRUARY 6, 2019
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	:	
	X	

The parties respectfully submit this Joint Case Status Report for the Case Management Conference currently scheduled for February 6, 2019. There is one live dispute between the Rule 23(b)(3) Damages Class Plaintiffs and First Data regarding a motion to compel data for notice purposes. There are no other issues for the Court to resolve at this time and the other parties who are not involved in the motion to compel respectfully suggest that the status conference be cancelled. Damages Class Plaintiffs are prepared to argue the motion to compel on February 6, should the Court want argument on the matter. Additional information regarding the First Data dispute is addressed below.

I. STATUS OF DISCOVERY/EXPERT REPORTS

A. Fact Discovery

The parties continue to work cooperatively on completing fact discovery. Depositions of the defendants, Target Plaintiffs, The Home Depot, the Hertz Plaintiffs, the Dollar General Plaintiffs, the 7-Eleven Plaintiffs, and representatives for the Rule 23(b)(2) Plaintiffs are complete. The deadlines to complete discovery have been extended in several other cases brought by certain other direct action plaintiffs.

Several parties are continuing to work with each other concerning questions and issues related to their respective document and data productions. There are no discovery disputes that

are ripe for the court to address. The parties reserve their rights to raise data issues that they are unable to resolve, including questions about data that has yet to be produced.

B. Expert Reports.

Expert discovery is ongoing. The parties are engaged in discussions concerning certain questions defendants have raised about plaintiffs' experts reports. The parties will endeavor to resolve these matters without Court intervention.

On January 24, 2019, the Chase, Bank of America, Citi, Wells Fargo, Visa, and Mastercard defendants filed a motion to compel the 7-Eleven, Target, and Home Depot plaintiff groups to produce material cited in the October 5, 2018 expert report of Maria Blanco. The parties have reached a compromise with terms under which plaintiffs have agreed to produce the material at issue. Accordingly, the motion has been withdrawn.

II. AMENDED AND NEW COMPLAINTS

On October 11, 2018, the defendants filed a letter for a pre-motion conference regarding their intention to move, pursuant to Rule 12(b)(1), to dismiss all claims the plaintiffs assert on behalf of subsidiaries, affiliates, and franchisees that are not named as plaintiffs in *7-Eleven, Inc. et al. v. Visa Inc. et al.*, No. 13-cv-5746-MKB-JO (E.D.N.Y.), *Roundy's Supermarkets, Inc. v. Visa Inc.*, No. 13-cv-5746-MKB-JO (E.D.N.Y.), *Hertz Corp. et al. v. Visa U.S.A. Inc. et al.*, No. 17-cv-3531-MKB-JO, *Dollar General Corp. et al. v. Visa U.S.A. Inc. et al.*, No. 17-cv-5988-MKB-JO (E.D.N.Y.), and *Home Depot, Inc. et al. v. Visa Inc. et al.*, No. 16-cv-5507-MKB-JO (E.D.N.Y.). The parties to the aforementioned actions are currently engaging in the meet and confer process and discussing a possible resolution that may allow them to avoid motion practice. The Court granted plaintiffs in these actions an extension until February 1, 2019 to respond to the defendants' request for a pre-motion conference.

On November 7, 2018, the bank defendants filed a letter for a pre-motion conference regarding their intention to move, pursuant to Rules 12(b)(1) and 12(b)(6), to dismiss all claims asserted against them in the Equitable Relief Class Action Complaint. Plaintiffs filed their response on November 14, 2018. Pursuant to an order entered on January 10, 2019, the bank defendants served their opening brief on January 16, 2019; plaintiffs' opposition brief is due March 18, 2019; and the bank defendants' reply brief is due April 18, 2019.

III. Motion to Compel First Data's Compliance with Subpoena

Damages Class Counsel's Position

There is a pending motion to compel third party First Data's compliance with a subpoena regarding data critical for notice purposes. Plaintiffs' motion was filed January 10, 2019 (ECF 7352) and First Data's opposition was filed on January 15, 2019 (ECF 7355). The motion is fully briefed. Since the filing of the motion to compel, there have been additional developments. One corrected file was produced on or around January 15. Following receipt of that new production, Epiq examined the materials and determined that again First Data had not corrected the critical issue related to BINs. Damages Class Counsel wrote to First Data's counsel on January 16, 18, 22, 25 and 29 seeking an update regarding the missing files and alerting counsel to upcoming dates and events, including the Court's January 24, 2019 Order granting preliminary approval. First Data's counsel responded to Damages Class Counsel on January 30 and that position is below.

First Data's Position

On January 30, 2019, First Data's counsel responded to Damages Class Counsel, informing them that First Data continues to diligently work to resolve the technical issues that

had been previously discussed with Damages Class Counsel, so that the requested information could be provided as soon as possible.

Dated: January 30, 2019

Respectfully submitted,

HOLWELL SHUSTER & GOLDBERG LLP

By: /s/ Blair E. Kaminsky

Michael S. Shuster
Demian A. Ordway
Blair E. Kaminsky
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
mshuster@hsgllp.com

ARNOLD & PORTER KAYE SCHOLER LLP

Robert C. Mason
250 West 55th Street
New York, NY 10019
(212) 836-8000
robert.mason@arnoldporter.com

Robert J. Vizas
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
(415) 471-3100
robert.vizas@arnoldporter.com

Mark R. Merley
Matthew A. Eisenstein
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000
mark.merley@arnoldporter.com

*Attorneys for Visa U.S.A. Inc., Visa Inc., and
Visa International Service Association*